

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 260 of 2021 (S.B.)

Muridhar Jagdeorao Pande,
Aged about 61 years,
R/o State Bank, Aanad Colony,
Near Central Jail, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department of
Labour & Industry, Mantralaya Mumbai.
- 2) Assistant Labour Commissioner
(Reg), Amravati Division, Court Road,
Amravati-444602.
- 3) Accountant General (Accountant &
Entitlement) II, Maharashtra,
Nagpur, 440001.

Respondents.

S/Shri N.R. & K.N.Saboo, Advs. for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 04/01/2024.

JUDGMENT

Heard Shri N.R.Saboo, learned counsel for the applicant
and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant is a retired Class-IV employee. The
respondents have issued impugned order / communication dated

01/03/2021 by which the excess amount of Rs.8,25,692/- is to be recovered from the pensionary benefits of applicant.

3. The applicant was a Class-IV employee. As per the G.R. dated 26/02/2019, the recovery cannot be made from the retired employee. Hence, the applicant approached to this Tribunal for the following reliefs –

“(9) (i) quash and set aside impugned communication dated 01.03.2021 of recovery issued by Respondent No.2, Assistant Conservator of Forest, Amravati annexed to the O.A. at A-2.

(ii) By appropriate order be pleased to quash & set aside revised order of pay fixation of applicant w.e.f. oct. 06 till his age of retirement & with further direction to fix regular pension of applicant forthwith without any modification of pay which is already paid to him & to release retiral benefits of applicant along with interest on delayed payments.

(10) Pending disposal of O.A. stay the effect and operation of communication dated 01.03.2021 issued by Respondent No.2, annexed to the O.A. at A- 2, & direct the respondents to continue to pay provisional pension to applicant till regular pension is fixed.”

4. The O.A. is strongly opposed by the respondents. It is submitted that applicant had given undertaking at the time of pay fixation as per the 6th pay commission stating that he shall refund the amount, if any. Therefore, the applicant cannot say that excess amount cannot be recovered from him. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for applicant has pointed out the G.R. dated 26/02/2019 and the Judgment of this Tribunal in O.A.No.527/2022. The learned counsel for applicant has submitted that as per the G.R. dated 26/02/2019, excess payment made to the retired Class-III and Class-IV employee shall not be recovered. Eventhough the undertaking was given by the Class-IV employee, excess amount cannot be recovered. The learned counsel for applicant has pointed out the Judgment of Hon'ble Bombay High Court in the case of the ***State of Maharashtra Vs. Rekha Vijay Dube (Mrs.), 2021 (2) Bom. LC 551 (Bom)***.

6. The learned P.O. has submitted that as per the Judgment of the Hon'ble Supreme Court in the case of the ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC 267***, the undertaking given by the applicant is sufficient to recover the excess amount.

7. At last learned counsel for applicant has pointed out the decision of the Hon'ble Supreme Court in the case of the ***State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014*** in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) and the Judgment of the Hon'ble Bombay High Court in the case of the ***State of Maharashtra Vs. Rekha Vijay Dube (Mrs.), 2021 (2) Bom. LC 551 (Bom)***.

8. This Tribunal in O.A.No. 527/2022 has recorded findings that eventhough undertaking was given by Class-III or Class-IV employee that cannot give any right to the employer to recover the excess amount. The G.R. dated 26/02/2019 is very clear. Para-3 of the G.R. is reproduced below –

“३. यासंदर्भात स्पष्ट करण्यात येते की, प्रस्तुत प्रकरणात मा. न्यायालयाने वसुलीबाबत प्रतिबंधात्मक आदेश दिले असले तरी, शासन परिपत्रक दि.२८ जुलै २०१४ नुसार, चूकीच्या वेतन निश्चितीमुळे जे अतिरिक्त रक्कमेचे प्रदान झालेले आहे, ती चूकीची वेतननिश्चिती दुरुस्त करण्याबाबत मा. न्यायालयाने प्रतिबंध केलेला नाही ही बाब विचारात घेता या प्रकरणात खालीलप्रमाणे आदेश देण्यात येत आहेत.

(१) अ) सेवानिवृत्त वर्ग ३ व वर्ग ४ च्या कर्मचा-यांना करण्यात आलेल्या अतिप्रदानाची वसूली करण्यात येवू नये.

आ) निवृत्तीच्या उंबरठ्यावर असणा-या वर्ग-३ व वर्ग-४ च्या कर्मचा-यांकडून अतिप्रदानाची वसूली करण्यात येवू नये.

इ) पाच वर्षांपेक्षा अधिक कालावधीसाठी अतिप्रदान करण्यात आले असल्यास वसूली करण्यात येवू नये.

ई) चूकीने लाभ देण्यात आले असल्यास त्या चूकीची दुरुस्ती करण्यात यावी.

उ) दि.२८ जुलै २०१४ चे परिपत्रक हे त्या परिपत्रकात संदर्भ म्हणून नमूद केलेल्या व परिपत्रकांपूर्वी निर्गमित केलेल्या शासन निर्णय/परिपत्रक/पत्रे या संदर्भात नेमकी काय कार्यवाही करावयाची आहे याबाबत मार्गदर्शन आहे.

(२) तसेच सेवानिवृत्त कर्मचा-यांच्या व सेवेतील कर्मचा-यांच्या संदर्भात चूकीच्या पध्दतीने वेतन निश्चिती केली असल्यास तात्काळ विहित पध्दतीने त्या वेतन निश्चितीमध्ये विहित कार्यपध्दतीनुसार सुधारणा करून नव्याने वेतन निश्चिती करण्यात यावी. ”

9. The Hon'ble Bombay High Court in the case of the **State of Maharashtra Vs. Rekha Vijay Dube (cited supra)** has held in para-9 as under –

9. The other reason for which we are not inclined to hold that Jagdev Singh (supra) has application to the facts of this case is because of situations (i) and (iii) forming part of paragraph 18 of Rafiq Masih (supra). Situation (i) clearly bars recovery from employees belonging to Class III/Group 'C' service. Further, situation (iii) bars recovery from employees when excess payment has been made for a period in excess of 5 (five) years before the order of recovery is issued. We are not inclined to accept the contention of Mr. Pathan that although recovery from employees belonging to Class III/Group 'C' cannot be made in terms of situation (i) (supra) while in service, such recovery could be made from retired Class III/Group 'C' employees who have either retired or are due for retirement within one year of the order of recovery. If we were to accept Mr. Pathan's contention, it would lead to a situation that although there could be a declaration given by a Class III/Group 'C' employee while in service that excess payment could be recovered from him from future salary to be paid to him, which cannot be recovered in terms of situation (i), but in terms of situation (ii), as interpreted in Jagdev Singh (supra), recovery could be effected from his retirement benefits after the relationship of employer-employee ceases to subsist. Rafiq Masih (supra), very importantly, carves out situation (v) (supra) too, proceeding on the premise that recovery from retirement benefits, by asking the retired employee to refund excess amount, if any, received by him, if found to be iniquitous and arbitrary and thereby causing hardship, such a step ought to be avoided. This being the reasoning it would be far-fetched that what the

employer (State) cannot resort to against a Class III/Group 'C' employee while he is in service, such employer would be empowered to do so after retirement of the Class III/Group 'C' employee. If accepted, the same would amount to a distorted interpretation of the situations in Rafiq Masih (supra), which has to be eschewed. We are of the considered opinion that the Tribunal was right in distinguishing Jagdev Singh (supra) by observing that paragraph 11 of the said decision must be confined to Class I/Group 'A' and Class II/Group 'B' officers. Mr.Pathan has not been able to show that the original applicants gave the declaration/undertaking in pursuance of a statutory rule. That not having been shown, the contention raised by him on the basis of Jagdev Singh (supra) has to be rejected. We, however, leave the question open as to whether Jagdev Singh (supra) would apply to cases of Class III/Group 'C' employees who by giving declaration, mandated by a statutory rule, undertake to refund any sum received in excess of their entitlement.

10. The applicant is a retired Class-IV employee. Hence, in view of the Judgment of the Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih (White Washer) (cited supra)** and in view of the G.R. dated 26/02/2019, the impugned notice / communication dated 01/03/2021 of the recovery of Rs.8,25,692/- is prima facie illegal. Therefore, following order is passed –

ORDER

(i) The O.A. is allowed.

(ii) The Notice / communication dated 01/03/2021 issued by respondent no.2 for the recovery of Rs.8,25,692/- is hereby quashed and set aside.

(iii) The amount if recovered, it be refunded with interest @ 6% p.a. from the date of recovery, till the actual refund of the amount to the applicant.

(iv) No order as to costs.

Dated :- 04/01/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 04/01/2024.